

that is otherwise provided to you indicates that the securities are held by U.S. residents.

(6) For exchange offers conducted pursuant to § 230.802 under the Act by persons other than the issuer of the subject securities or its affiliates that are not made pursuant to an agreement with the issuer of the subject securities, the issuer of the subject securities will be presumed to be a foreign private issuer and U.S. holders will be presumed to hold 10 percent or less of the outstanding subject securities, unless paragraphs (h)(7)(i), (ii) or (iii) of this section indicate otherwise.

(7) For rights offerings and business combinations, including exchange offers conducted pursuant to § 230.802 under the Act, where the offeror is unable to conduct the analysis of U.S. ownership set forth in paragraph (h)(3) of this section, the issuer of the subject securities will be presumed to be a foreign private issuer and U.S. holders will be presumed to hold 10 percent or less of the outstanding subject securities so long as there is a primary trading market for the subject securities outside the United States, as defined in § 240.12h-6(f)(5) of this chapter, unless:

(i) Average daily trading volume of the subject securities in the United States for a recent twelve-month period ending on a date no more than 60 days before the public announcement of the business combination or of the record date for a rights offering exceeds 10 percent of the average daily trading volume of that class of securities on a worldwide basis for the same period; or

(ii) The most recent annual report or annual information filed or submitted by the issuer with securities regulators of the home jurisdiction or with the Commission or any jurisdiction in which the subject securities trade before the public announcement of the offer indicates that U.S. holders hold more than 10 percent of the outstanding subject class of securities; or

(iii) The acquiror or issuer knows or has reason to know, before the public announcement of the offer, that the level of U.S. ownership exceeds 10 percent of such securities. As an example, an acquiror or issuer is deemed to know information about U.S. owner-

ship of the subject class of securities that is publicly available and that appears in any filing with the Commission or any regulatory body in the issuer's jurisdiction of incorporation or (if different) the non-U.S. jurisdiction in which the primary trading market for the subject securities is located. The acquiror in a business combination is deemed to know information about U.S. ownership available from the issuer. The acquiror or issuer is deemed to know information obtained or readily available from any other source that is reasonably reliable, including from persons it has retained to advise it about the transaction, as well as from third-party information providers. These examples are not intended to be exclusive.

(i) *United States.* *United States* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

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§ 230.801 Exemption in connection with a rights offering.

A rights offering is exempt from the provisions of Section 5 of the Act (15 U.S.C. 77e), so long as the following conditions are satisfied:

(a) *Conditions—(1) Eligibility of issuer.* The issuer is a foreign private issuer on the date the securities are first offered to U.S. holders.

(2) *Limitation on U.S. ownership.* U.S. holders hold no more than 10 percent of the outstanding class of securities that is the subject of the rights offering (as determined under the definition of "U.S. holder" in § 230.800(h)).

(3) *Equal treatment.* The issuer permits U.S. holders to participate in the rights offering on terms at least as favorable as those offered the other holders of the securities that are the subject of the offer. The issuer need not, however, extend the rights offering to security holders in those states or jurisdictions that require registration or qualification.

(4) *Informational documents.* (i) If the issuer publishes or otherwise disseminates an informational document to the holders of the securities in connection with the rights offering, the issuer

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must furnish that informational document, including any amendments thereto, in English, to the Commission on Form CB (§239.800 of this chapter) by the first business day after publication or dissemination. If the issuer is a foreign company, it must also file a Form F-X (§239.42 of this chapter) with the Commission at the same time as the submission of Form CB to appoint an agent for service in the United States.

(ii) The issuer must disseminate any informational document to U.S. holders, including any amendments thereto, in English, on a comparable basis to that provided to security holders in the home jurisdiction.

(iii) If the issuer disseminates by publication in its home jurisdiction, the issuer must publish the information in the United States in a manner reasonably calculated to inform U.S. holders of the offer.

(5) *Eligibility of securities.* The securities offered in the rights offering are equity securities of the same class as the securities held by the offerees in the United States directly or through American Depositary Receipts.

(6) *Limitation on transferability of rights.* The terms of the rights prohibit transfers of the rights by U.S. holders except in accordance with Regulation S (§230.901 through §230.905).

(b) *Legends.* The following legend or an equivalent statement in clear, plain language, to the extent applicable, appears on the cover page or other prominent portion of any informational document the issuer disseminates to U.S. holders:

This rights offering is made for the securities of a foreign company. The offer is subject to the disclosure requirements of a foreign country that are different from those of the United States. Financial statements included in the document, if any, have been prepared in accordance with foreign accounting standards that may not be comparable to the financial statements of United States companies.

It may be difficult for you to enforce your rights and any claim you may have arising under the federal securities laws, since the issuer is located in a foreign country, and some or all of its officers and directors may be residents of a foreign country. You may not be able to sue the foreign company or its officers or directors in a foreign court for violations of the U.S. securities laws. It may

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be difficult to compel a foreign company and its affiliates to subject themselves to a U.S. court's judgment.

§ 230.802 Exemption for offerings in connection with an exchange offer or business combination for the securities of foreign private issuers.

Offers and sales in any exchange offer for a class of securities of a foreign private issuer, or in any exchange of securities for the securities of a foreign private issuer in any business combination, are exempt from the provisions of section 5 of the Act (15 U.S.C. 77e), if they satisfy the following conditions:

(a) *Conditions to be met—(1) Limitation on U.S. ownership.* Except in the case of an exchange offer or business combination that is commenced during the pendency of a prior exchange offer or business combination made in reliance on this paragraph, U.S. holders of the foreign subject company must hold no more than 10 percent of the securities that are the subject of the exchange offer or business combination (as determined under the definition of "U.S. holder" in §230.800(h)). In the case of a business combination in which the securities are to be issued by a successor registrant, U.S. holders may hold no more than 10 percent of the class of securities of the successor registrant, as if measured immediately after completion of the business combination.

(2) *Equal treatment.* The offeror must permit U.S. holders to participate in the exchange offer or business combination on terms at least as favorable as those offered any other holder of the subject securities. The offeror, however, need not extend the offer to security holders in those states or jurisdictions that require registration or qualification, except that the offeror must offer the same cash alternative to security holders in any such state that it has offered to security holders in any other state or jurisdiction.

(3) *Informational documents.* (i) If the offeror publishes or otherwise disseminates an informational document to the holders of the subject securities in connection with the exchange offer or business combination, the offeror must furnish that informational document, including any amendments thereto, in English, to the Commission on Form CB (§239.800 of this chapter) by the first